

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF WASHINGTON, AT SEATTLE

In re:

BRUCE BORJESSON

DEBTOR

No. 15-16110

RESPONSE TO MOTION FOR
ORDER APPROVING SALE OF
REAL PROPERTY AND MOTION TO
COMPEL DEBTOR TO SURRENDER
AND VACATE REAL PROPERTY

COMES NOW the Debtor, Bruce Borjesson, by and through his attorneys of record, Vortman & Feinstein, PS, and responds as follows to the Trustee's Motions for Order Approving Sale of Real Property and to Compel Debtor to Surrender and Vacate Real Property:

I. The Debtor's Health Mandates Additional Time to Vacate the House.

The Debtor, Bruce Borjesson, is 69 years old. The Debtor has resided at 9519 Fourth Ave NW, Seattle, WA 98117, for the last 32 years. He acquired the property upon the death of the previous owner, Major James J. Harris, whom he cared for in his final days. As a testament to their friendship, Major Harris left the Debtor the property in his will. Over 32 years, the Debtor has acquired a significant amount of items; few have monetary value, quite a lot has sentimental value. The Debtor began packing when he received the Trustee's Motion to Sell. That the home was under contract came as a complete surprise. The Trustee has had an offer since March 16, 2018. At no point did the Trustee nor any of his

1 representatives mention that an offer had been accepted. Had the Debtor been
2 informed in March that the house was under contract, he could have begun
3 locating alternative housing immediately. He would very likely have vacated the
4 property by now. However, the situation is extremely complicated given the short
5 amount of time the Trustee has given the Debtor – less than three days after the
6 hearing on the sale Motion.

7 The Debtor had a hip replacement on March 9, 2018. The surgery corrected
8 twenty years of pain. The Debtor is on Medicare and only recently has his condition
9 deteriorated to the point where they would cover the surgery. In-patient
10 rehabilitation was not required, however. He has been rehabilitating at home.
11 Though his mobility is greatly improved and he no longer has to walk with a cane
12 or walker, he is not capable of doing the physical movements to be able to move
13 himself. He still has unresolved arthritis in other joints that affect his ability to move
14 and lift as well.

15 The weather next week is expected to reach into the 90s. As an elderly
16 person in poor overall health, he is at a heightened risk of heat stroke. Furthermore,
17 he has developed a significant and troubling cough. The stress of this has
18 exacerbated his health issues. In trying to pack what he can, he has had shortness
19 of breath and dizzy spells already. Though he has asked friends to help, they are
20 not twenty years old either. The Debtor's income is from his pension, which he
21 receives once a month. He does not have the funds to pay anyone to help him.

22 The Debtor also lacks funds to pay first, last, and a deposit on an apartment

1 or rental home. The Debtor has been looking into senior communities with
2 independent living or a graduated assisted living community that he would be able
3 to afford. Those programs for low-income seniors have months long waiting lists.
4 The Debtor could have applied for a spot in March and have been accepted by
5 now. Instead, the Debtor's likelihood of finding a spot within the next week is
6 extremely unlikely. In the meantime, the Debtor has been applying for other
7 apartment rentals throughout the Seattle area, with the possibility of home health
8 care assistance. When they find out that he's in bankruptcy, he becomes ineligible
9 even though his credit score is above their acceptable threshold. He has spoken
10 with friends and family, but none can provide even short term living assistance.

11 Because the Motion came out of the blue, he was unprepared financially for
12 having to move out of his home so quickly. Requiring the Debtor to vacate the
13 property less than three days after the hearing on the Motion to Sell is cruel. The
14 Trustee accepted the offer in March. It took the Trustee's agents over four months
15 to get their ducks in a row. The Debtor has requested that the Trustee postpone
16 the sale for a short period of time to make arrangements, or in the alternative, to
17 ask the purchaser if the Debtor can stay in the home after the sale closes (paying
18 rent) while it is applying for permits and before demolition/construction begins. The
19 Trustee's attorney could provide the Debtor with no assurances, though Mr.
20 Groshong did express his sympathy for the Debtor's situation, which is
21 appreciated. However, sympathy will not prevent the Debtor from being
22 hospitalized for heat stroke or injury. It will not keep the Debtor from becoming

1 homeless, living in a shelter at best. The only outcome of requiring the Debtor to
2 vacate the property by July 30, 2018, will be his inevitable hospitalization and/or
3 homelessness.

4 **II. Due to Poor Marketing, the Purchase Price is Too Low.**

5 Notwithstanding the Debtor's acquiescence to an eventual sale of the
6 property, this particular sale is objectionable. While the Debtor does not dispute
7 that the Trustee has the right to market and sell property of the estate, the Debtor
8 objects to the terms of the Purchase and Sale Agreement attached to the
9 Declaration of Edmund Wood as Exhibits 7 and 8. The contract calls for the
10 purchase price of \$345,000.00. The Debtor valued the property in 2015 at
11 \$500,000.00 on Schedule A. According to the Title Report (Exhibit 1, Decl. of
12 Edmund Wood), the current tax assessed value is \$574,000.00. The property was
13 listed by Rich Kim of Lumen Brokers on behalf of the Trustee Edmund Wood for
14 \$249,950.00. The Debtor objects to the significant short sale of this property. While
15 there are significant defects in the property that render it a "tear down," the listing
16 price is ridiculously low.

17 Furthermore, there have been questionable actions on behalf of the broker
18 in soliciting offers. First, as shown in the Zillow.com listing attached hereto as
19 Exhibit A, the description states that "VIEWINGS WILL COORDINATED AFTER
20 AN OFFER IS RECEIVED." This alone is highly unusual. However, it becomes
21 more so when after the listing went live on the MLS, the Debtor received several
22 phone calls from realtors in the area with questions regarding the property. He

1 directed those calls to Mr. Kim. Multiple realtors then phoned the Debtor back to
2 say that Mr. Kim had not returned their calls or emails. The question then is
3 whether this transaction was truly at an arm's length, or did Lumen Brokers cherry
4 pick this extremely low offer from a friendly developer? There is also an open
5 question as to how the realtor arrived at such a low asking price. It is also unknown
6 to what extent the property defects were disclosed to the potential buyer. The
7 Debtor has been fighting with King County to redevelop the property since at least
8 2009 to no avail.

9 The fact of the matter is that there is no way to know much of this information
10 without an evidentiary hearing. What is known is that the contract price is
11 ridiculously low and potentially leaves a great deal of money on the table for the
12 estate. The Zestimate (or Zillow.com's estimate of value) was \$565,152.00 as of
13 July 19, 2018. Also attached as Exhibit B is a list provided by Zillow of comparable
14 sales in the area. Those range from \$525,000 to \$665,000. While the Debtor's
15 property has significant defects, it is not unreasonable to expect that if the property
16 was marketed in an effective manner, higher offers would have been obtained. The
17 Debtor asserts that a higher offer may still yet be obtainable. A sale for \$345,000
18 leaves too much on the table to be acceptable.

19 **III. No Mortgage Liens Attach to Parcel B and its Sale is Subject to the**
20 **Debtor's Homestead.**

21 The Debtor's homestead is comprised of two parcels, the legal descriptions
22 of which are in the Trustee's Motion. The house sits on Parcel A, while Parcel B
23 consists of the back lot, which currently has the Debtor's outdoor workshop and a

1 storage area. The mortgage has and currently is secured only on Parcel A (having
2 the APN 394190-0081). Attached as Exhibit C is a true and correct copy of the
3 original Deed of Trust secured on Parcel A only. Parcel B is "landlocked" on all
4 sides; however, in 2009, the Debtor recorded a valid easement for ingress, egress,
5 and utilities over Parcel A, making it accessible. The Debtor had viewed both
6 parcels as his homestead and to that effect, he filed a Declaration of Homestead
7 on the original petition date (October 13, 2015) with the King County Recorder's
8 Office. Attached as Exhibit D is a true and correct copy of his Homestead
9 Declaration. The APN listed on the Homestead Declaration corresponds to Parcel
10 B (394190-0085), but has the address of Parcel A. There are several tax liens on
11 Parcel B as listed in the Trustee's Title Report, and the Debtor's interest remains
12 subject to those tax liens.

13 The Purchase and Sale Agreement does not specify which portion of the
14 Agreement is allotted to Parcel A and which to Parcel B. The Debtor claimed his
15 homestead exemption on Schedule C in 100% of the Fair Market Value, up to any
16 applicable statutory limit, in both parcels. Accordingly, the Debtor is entitled to up
17 to \$125,000.00 as his homestead from any sale of the property. As Parcel B is not
18 secured by a mortgage, Wilmington's approval of the short sale is pertinent only
19 as to Parcel A. The Debtor must be compensated for his interest in Parcel B up to
20 the statutory maximum.

21 There is no evidence before the Court of the value of Parcel B. The tax
22 assessed value has been kept at \$2,000 since Major Harris separated the lots in

1 1999. Accordingly, an appraisal of the land must be obtained and evidence of its
2 value submitted. This will require time, at least 30 days for an appraiser to be hired
3 and the report completed. The Debtor should be allowed to retain possession of
4 both Parcels while the value dispute is resolved.

5 Wilmington's short sale approval as to Parcel A is \$310,981.05. The carve
6 out term provides for \$20,500.00 to go to the estate from the sale. The Debtor
7 would be entitled to whatever portion of the sale is attributable to Parcel B in its
8 entirety. If the Trustee is able to successfully avoid the liens on Parcel A, the Debtor
9 would be entitled to the full \$125,000.00 regardless of what is apportioned to
10 Parcel A and which to Parcel B. At the very minimum, the Purchase and Sale
11 Agreement would need to be modified to specify apportionment of the price
12 between the two parcels.

13 Alternatively, the Debtor wishes to retain possession of Parcel B. The Parcel
14 would primarily be used for storage of the Debtor's belongings, including an old
15 RV that the Debtor acquired post-conversion (a friend gave it to him to use in lieu
16 of repaying a \$500 loan, and title remains in the previous owner's name). The
17 Debtor would be able to convert the RV into his domicile based upon his easement
18 rights upon Parcel A. The RV admittedly needs a lot of work to make habitable as
19 a permanent residence, and it is not a long-term solution given the Debtor's
20 medical issues. However, it would provide him with a stop-gap solution to his
21 housing crisis that could hopefully be resolved before winter.

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2 **IV. Deficiencies in the Chain of Title Render the Mortgage Avoidable.**

3 Financial circumstances being what they were when he acquired the house,
4 the Debtor entered into a mortgage with EquiFirst Corporation in 2007. In 2008,
5 the Debtor became aware of multiple irregularities in his mortgage documents and
6 servicing vis a vis MERS. After failing to receive adequate information from
7 EquiFirst and its subsequent servicer Ocwen, the Debtor ceased making payments
8 on or about October 2008. The loan was placed in default and upon Notice of
9 Default, the balance of the Note was accelerated and became due.

10 Roughly in February 2009, EquiFirst Corporation collapsed. The Debtor
11 alleges that its assets, including the Debtor's Note and Deed of Trust, were
12 purchased by Barclay's Bank. EquiFirst ceased to exist; it had no employees
13 capable of assigning the Note and Deed of Trust. MERS then substituted the
14 Regional Trustee Services Corporation as Trustee on June 4, 2009, and they
15 began foreclosure proceedings. On or about August 28, 2009, the Debtor filed his
16 first Complaint in the King County Superior Court 09-2-32105-1, alleging
17 deficiencies in the original mortgage and subsequent MERS transfers. An Order
18 Postponing the Trustee's Sale was entered on December 11, 2009. The Debtor
19 voluntarily dismissed the suit in April 2010.

20 SABR Mortgage allegedly acquired the Note and Deed of Trust on or about
21 April 16, 2012 from MERS. It began a judicial foreclosure against the Debtor on
22 September 26, 2014, in King County Superior Court under Case # 14-2-26804-1.

1 An Order Granting Summary Judgment was entered against the Debtor on
2 October 2, 2015. On October 30, 2015, the Debtor filed his Notice of Appeal of the
3 Order Granting Summary Judgment. The Commissioner Mary Neel of the Court of
4 Appeals of the State of Washington (Case #74214-1-I) determined that the Notice
5 of Appeal was premature as no final judgment had been entered.

6 Meanwhile, the Debtor filed his bankruptcy petition on October 13, 2015.
7 The mortgage was listed as Disputed on Schedule D but was roughly \$723,335.00
8 at the time of filing. No Proof of Claim has ever been filed in these proceedings.
9 Although at the time of filing SABR Mortgage attested to ownership and
10 possession of the Note in the prior Superior Court proceedings, at some time after
11 the filing of the bankruptcy, ownership was passed to Carrington Mortgage. It is
12 unknown when this occurred.

13 On April 27, 2018, Chris Lechtanski, AVP of Default for Carrington
14 Mortgage, filed with King County an Affidavit of Missing Assignment, asserting that
15 Carrington is the Current Mortgagee/Beneficiary, that there is at least one
16 assignment between SABR and Carrington (and perhaps others within this gap)
17 that do not appear within the public record, that such missing assignment(s) were
18 “never completed or, if completed, were lost, misplaced or destroyed before the
19 same could be placed of record”, and that “such missing assignment(s) cannot
20 now be obtained.” The document further asserts that the Carrington has not further
21 assigned or transferred their interest to another party. A true and correct copy of
22 the Affidavit is attached as Exhibit E. The Affidavit was filed at 10:29 a.m. The

1 Affidavit was allegedly signed on March 7, 2018.

2 Subsequent to this Affidavit, Kristopher Sandberg, Vice President of
3 Carrington, signed an assignment of the Deed of Trust to Wilmington Savings Fund
4 Society. A true and correct copy is attached as Exhibit F. This document was also
5 filed at 10:29 a.m. The Corporate Assignment of Deed of Trust was allegedly
6 signed on March 13, 2018. However, on February 28, 2018, Lesley Leuke filed a
7 Motion for Relief from Stay on behalf of Wilmington Savings Fund Society. At the
8 time of the hearing, Wilmington was unable to demonstrate that it was the lawful
9 owner of the Note and Deed of Trust. The Debtor raised his objections as to the
10 chain of title and was given an opportunity to address the Court at the hearing on
11 the Motion on April 6, 2018. The Court was generous with its time in allowing this
12 presentation and took patience in explaining that the legitimacy of the Note and
13 Deed of Trust were not properly before the Court. The Debtor asserts that this is
14 the time.¹

15 Notwithstanding his objections to the legitimacy of the Note and Deed of
16 Trust, Mr. Borjesson was and is committed to doing what he can to save his home
17 from the arbitrary sale by the Trustee. Mr. Borjesson submitted his original loan
18 modification application before the hearing on the Motion for Relief from Stay in
19

20 ¹ No foreclosure (judicial or non-judicial) is pending at this time. The Debtor estimates that following relief from the automatic
21 stay being granted on April 10, 2018, Wilmington has approximately 155 days remaining under the six-year statute of
22 limitations to pursue foreclosure of its Deed of Trust. The timeline was calculated as follows:

| Start | End | Duration | |
|-----------|-----------|----------|------------|
| | | 2190 | 6-year SOL |
| 10/1/2008 | 8/28/2009 | -322 | 1868 |
| 4/30/2010 | 9/26/2014 | -1611 | 257 |
| 4/10/2018 | 7/20/2018 | -102 | 155 |

1 the bankruptcy on April 6, 2018. He and his attorneys have been corresponding
2 through Shannon Lehmann of Aldridge Pite, LLP, having the title of Loss Mitigation
3 Supervisor, and based out of their Atlanta office, with most email communications
4 being cc'd to mortgageassistance@carringtonms.com, as specified by Ms. Leuke
5 and Ms. Lehmann. The most recent update to the package was on July 2, 2018
6 via email. At no time has Carrington, Wilmington, Aldridge Pite, or any
7 representative of these entities communicated that there was a pending short sale
8 application nor that the application had been granted in lieu of a loan modification.

9 The Debtor will be filing a separate declaration concurrent to this Response
10 regarding the chain of title prior to the bankruptcy filing. The Debtor has identified
11 several factual disputes of material fact that must be determined through either an
12 evidentiary hearing (at a minimum) or an adversary proceeding. The Debtor's
13 counsel has had several discussions with the attorney for the Trustee regarding
14 the viability of an adversary proceeding. The Debtor strongly encourages the
15 Trustee to pursue avoidance of the mortgage, which will maximize the recovery for
16 the estate if the Court grants its Motion to sell under the existing Purchase and
17 Sale Contract. If the Trustee files an Adversary Proceeding, the expiration of the
18 short sale approval by Wilmington becomes moot and would be stayed pending
19 resolution of the mortgage by the Court. The Debtor requests that he be allowed
20 to remain in possession of the property while the Adversary is pending, with the
21 understanding that he would continue to try to find alternative housing as soon as
22 possible.

1 **V. Conclusion**

2 Accordingly and for the reasons stated herein, the Debtor urges the Court
3 to deny the Trustee's Motions, or in the alternative, to set an evidentiary hearing
4 to determine the value of Parcel B and whether Wilmington's mortgage may be
5 avoided on Parcel A, and to allow the Debtor to remain in his home while these
6 disputes are being resolved.

7 Dated this 20th day of July, 2018.

8 /s/ Kathryn P. Scordato
9 Kathryn P. Scordato, WSBA #41922
Attorney for Debtor

10 **Declaration of Bruce Borjesson**

11 I, Bruce Borjesson, duly sworn upon oath under penalty of perjury under the
12 laws of the State of Washington, declare and state as follows:

13 The facts and assertions made within the above Response are true and
14 correct to the best of my knowledge and belief and are incorporated herein by
15 reference. Attached are true and correct copies of the following documents:

- 16 A. Zillow.com listing for 9519 NW, Seattle, WA 98117 as of July 19, 2018
17 B. Zillow.com list of Comparable Sales as of July 19, 2018
18 C. Deed of Trust dated August 2, 2007
19 D. Debtor's Homestead Declaration dated October 13, 2015
20 E. Affidavit of Missing Assignment dated March 7, 2018
21 F. Corporate Assignment of Deed of Trust dated March 13, 2018

22 Dated this 20th day of July, 2018.

23 /s/ Bruce Borjesson
24 Bruce Borjesson, Debtor